

The commission proposes the repeal of §115.950, concerning Standard Construction Permit for Volatile Organic Compounds (VOC) Control Projects.

### **Explanation of Proposed Rule**

The commission proposes this revision to Chapter 115, concerning Control of Air Pollution from VOC, and to the State Implementation Plan in order to streamline rule requirements. The Chapter 115 standard permit was adopted in 1993 as a temporary measure because at the time there was no standard permit for pollution control projects in Chapter 116. The two standard permits are largely duplicative. The more logical location for a standard permit is in Chapter 116, which concerns Control of Air Pollution by Permits for New Construction or Modification. Concurrent with this repeal, the commission proposes revisions to the Chapter 116 standard permit which are designed to allow greater flexibility in making the demonstration that a project is environmentally beneficial.

### **Fiscal Note**

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the proposed repeal.

### **Public Benefit/Cost Note**

Mr. Minick has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of implementing the repeal will be a more

understandable regulation. There are no anticipated costs to small businesses or persons, except as follows. During this period, indirect costs to businesses may result from the proposed repeal. If the Chapter 115 standard permit is repealed, owners and operators of large sources required by Chapter 115 to install new pollution control facilities to reduce emissions of VOC would probably use the Chapter 116 standard permit for pollution control projects. Chapter 116 standard permits require a \$450 registration fee, whereas the Chapter 115 standard permit does not. After November 15, 1996, there will be very few additional permits needed, since most Chapter 115 compliance dates will have passed. If no new control measures are required, there will be minimal impact due to the repeal of the Chapter 115 standard permit. The maximum expected fiscal impact would occur if new Chapter 115 rules were written with similar scope and lead time as the November 15, 1996 rules. Under this scenario, the fee cost to use the Chapter 116 standard permit would be \$18,000 for 40 permits, or \$3600 annually over five years. These costs are minimal in relation to the costs of the controls associated with the permits.

### **Takings Impact Assessment**

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated Section 2007.043. The following is a summary of that assessment. The specific purpose of the rule repeal is to eliminate largely duplicative requirements in multiple chapters. Promulgation and enforcement of the repeal will not affect private real property which is the subject of the rule because the repeal makes minor changes to the requirements for obtaining a standard permit for VOC control projects.

### **Public Hearing**

A public hearing on this proposal will be held in Austin on January 6, 1997 at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Policy and Regulatory Development at (512) 239-4900. Requests should be made as far in advance as possible.

### **Submittal of Comments**

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96105-115-AI. Comments must be received by 5:00 p.m., January 6, 1997. For further information, please contact Randy Hamilton, Air Policy and Regulations Division, (512) 239-1512.

### **Statutory Authority**

The repeal is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeal implements the Health and Safety Code, §382.017.

**SUBCHAPTER J: ADMINISTRATIVE PROVISIONS**

**STANDARD PERMITS**

**§115.950. Standard Construction Permit for Volatile Organic Compounds (VOC) Control  
Projects. (Repeal.)**

The agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 20, 1996.

The commission proposes amendments to §§116.610, 116.611, 116.615; a new §116.617; the repeal of existing §116.617, concerning Standard Permits, and revisions to the State Implementation Plan (SIP) regarding these proposed amendments, repeal, and new section. Since the proposed changes to §116.617, concerning Standard Permit for Pollution Control Projects, are extensive, the commission determined that it would be administratively more efficient to repeal §116.617 and replace it with a new §116.617. These changes are part of a consolidation of the three standard air permits for pollution control facilities, currently located in Chapters 115, 116, and 117, into a single location in Chapter 116.

#### **Explanation of Proposed Rules**

The commission proposes defining “project” for purposes of §116.610, concerning Applicability. The definition has been added to reflect the regulatory intent of the term in this subchapter. A project may include the construction or modification of a single facility or the construction or modification of a group of facilities. Examples of projects are: the installation of a single facility such as a flare or the installation of group of facilities such as a gas production plant. The use of this definition is intended to prevent projects from being artificially separated for the purposes of circumventing Chapter 116 permitting requirements.

Proposed revisions to §116.610(a)(1) would add seven air contaminants from §116.211(a)(1), concerning Standard Exemption List, to the list of compounds for which no additional impacts analysis is required. Revisions to terminology are made to be consistent with commission rule drafting

guidelines. Also, the revisions establish that a specific standard permit may provide for an impact analysis other than requiring the limitations of Standard Exemption 106 or 118 be met. The commission proposes to delete §116.610(a)(4) because the agency has the authority to add such conditions to permits without this language. Paragraph (5) is renumbered to (4) and revised to be grammatically consistent with paragraphs (1)-(3).

The proposed revisions to §116.610(b) would clarify that for pollution control projects, the determination of a new major source or major modification is modified by the procedures of §116.617.

The proposed revisions to §116.611, concerning Registration Requirements, reformat the section, establish that a particular standard permit may provide for a different registration period, and add subsection (c), which provides a voluntary mechanism for making emission limits federally enforceable. Revisions to terminology are made to be consistent with commission rule drafting guidelines.

A proposed revision to §116.615, concerning General Conditions, deletes paragraph (4), which relates to the voiding of a standard permit for failure to construct. Voiding a standard permit has no practical effect, since the registrant could reclaim the standard permit at any time. Paragraphs (5)-(11) are renumbered (4)-(10). Newly renumbered paragraphs (4) and (5) are revised to clarify that a particular standard permit may modify the requirements of these paragraphs. Terminology is revised to more accurately reflect that standard permits are authorized by rule and to provide consistency with

commission rule drafting guidelines.

The proposed new §116.617, concerning Standard Permit for Pollution Control Projects, carries through the commission's previous decision to place each standard permit in a separate section, and the title reflects the current substance of the section.

The introductory text for the proposed new §116.617 describes the applicability of the standard permit for pollution control projects. Section 116.617 currently consists of two permit types, paragraph (1) for mandatory pollution control projects and paragraph (2) for voluntary pollution control projects. These are identical except for their approach to future netting and the ability of the source to take advantage of incidental production increases. The proposed new applicability text combines the mandatory and voluntary standard permits. In addition, the applicability of the standard permit is extended to authorize the replacement of existing emission control equipment. The standard permit applicability is also clarified to authorize the substitution of compounds necessary to come into compliance with governmental standards (such as the Montreal Protocol), or to reduce emission effects (such as the replacement in a manufacturing process of a toxic compound with one less toxic).

The proposed new §116.617(1) would eliminate the procedure of using Standard Exemptions 106 or 118 to evaluate any emission increases of an air contaminant for which there is no applicable National Ambient Air Quality Standard. The proposed new section is a more general approach to ensure that any such increases will not cause significant health effect concerns. Internal guidance will be



developed to address how the executive director will evaluate increases of non-criteria pollutants. The new approach gives the executive director the discretion to object to the claim for a standard permit when he determines there are significant health effect concerns such as the conversion of an air contaminant to a highly toxic by-product that is projected to have an unacceptable off-property impact. The agency's experience has been that abatement projects very rarely raise such concerns. The proposed approach is designed to facilitate the construction of air pollution control facilities by simplifying their permitting, while retaining the ability of the agency to protect air quality. For pollution control facilities which previously would have been authorized under Chapter 115 or 117 standard permits, the new approach represents an additional opportunity for agency review of air impacts.

Proposed new §116.617(2) would reduce the period of time necessary to obtain construction authorization under the current Chapter 116 rule and increase the time necessary to obtain authorization for projects previously authorized under Chapters 115 and 117. This minimal period is sufficient for the agency to evaluate and notify the registrant of any concerns, while at the same time expediting the installation of pollution control facilities.

The proposed new §116.617(3) reduces required information reporting to the agency for pollution control projects. Standard permit reports of construction progress and start-up for pollution control projects are not essential to the agency.

Proposed new §116.617(4) establishes requirements for the replacement of existing emission control equipment. Under the proposed new §116.617(4), if replacement of control equipment or a control technique permitted under §116.110 occurs, the testing and recordkeeping requirements of the permit would continue to apply. An exception to this is a replacement control device of a different type for which the old provision no longer makes sense. Section 116.617(4)(C) allows replacements that result in no emissions increases to be registered after the change occurs.

Proposed new §116.617(5) would maintain the distinctions between required and voluntary standard permits for production capacity increases which may occur incidentally as a result of installing pollution control equipment or implementation of control techniques.

Proposed new §116.617(6) provides for incidental emissions increases which may result from mandatory, voluntary, or replacement pollution control projects.

Proposed §116.617(8)(C) simplifies the approach to emission netting by referencing the underlying federal standards. There would continue to be no required netting of emission changes in evaluating the proposed pollution project. Future netting calculations would include the pollution control project emission changes, if the changes are determined to be creditable under federal rules. This preamble will not attempt to fully summarize federal netting procedures. In general, Prevention of Significant Deterioration (PSD) netting includes any emission changes, unless previously relied upon in issuance of a PSD permit. In contrast, the nonattainment rules exclude from netting any emission reductions

required by federal or state SIP rules.

### **Fiscal Note**

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcement and administration of the sections.

### **Public Benefit**

Mr. Minick has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of enforcement of and compliance with the rules as proposed will be a more efficient use of agency resources related to the review and issuance of permits which result from pollution control projects. The proposed changes will also result in a more cost effective and streamlined approach to the permitting process related to projects requiring the installation of emissions control equipment or implementation of a control technique for compliance with a governmental standard, voluntary pollution control or the replacement of existing emissions control equipment or control technique. There are no anticipated additional economic costs to any person, including small business, required to comply with the section as proposed.

### **Takings Impact Assessment**

The commission has prepared a Takings Impact Assessment for these rules in accordance with Texas Government Code, §2007.043. The following is a summary of that Assessment. The specific purpose

of the rules is to streamline and consolidate the permitting process for pollution control projects. The rules will substantially advance this specific purpose by simplifying and adding flexibility to an existing permit-by-rule option to the permitting process. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because it is an optional approach to existing permitting requirements.

### **Public Hearing**

A public hearing on the proposal will be held in Austin on January 6, 1997 at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Policy and Regulatory Development at (512) 239-4900. Requests should be made as far in advance as possible.

### **Submittal of Comments**

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### **Statutory Authority**

The amendments and new section are proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and TCAA, §382.051, which provides the commission the authority to issue permits.

The proposed amendments and new section implement the Health and Safety Code, §382.017 and §382.051.

## **SUBCHAPTER F : STANDARD PERMITS**

### **§116.610. Applicability.**

(a) Pursuant to the Texas Clean Air Act (TCAA), §382.051, a project [projects involving the types of facilities or physical or operational changes to facilities] which meets [meet] the requirements for a standard permit listed in this subchapter is [are] hereby entitled to the standard permit; provided the following conditions listed in this section are met. For the purposes of this subchapter, project means the construction or modification of a facility or a group of facilities submitted under the same registration claim. [however, that:]

(1) any project which results in a net increase in emissions of air contaminants from the project other than carbon dioxide, water, nitrogen, methane, ethane, hydrogen, oxygen, or those for which a National Ambient Air Quality Standard has been established must meet the emission limitations of Standard Exemption 106(c) or (d) or Standard Exemption 118(c), unless otherwise specified by a particular standard permit;

(2) construction or operation of the project must [shall] be commenced prior to the effective date of a revision to this subchapter under which the project would no longer meet the requirements for a standard permit;

(3) the proposed project must [shall] comply with the applicable provisions of the Federal Clean Air Act (FCAA), §111 (regarding Federal New Source Performance Standards) and §112 (regarding Hazardous Air Pollutants);

[(4) there are no permits under the same Texas Natural Resource Conservation Commission (TNRCC) account number that contain a condition or conditions precluding use of a standard permit or standard permits under this subchapter;]

~~4~~[(5)] the owner or operator of the facility must register [registers] the proposed project in accordance with §116.611 of this title (relating to Registration Requirements).

(b) Any project, except those authorized under §116.617 of this title (relating to Standard Permits for Pollution Control Projects), which constitutes a new major source, or major modification under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration Review) or Part D (Nonattainment Review) and regulations promulgated thereunder is [shall be] subject to the requirements of §116.110 of this title (relating to Applicability) rather than this subchapter.

(c) Persons may not [No persons shall] circumvent by artificial limitations the requirements of §116.110 of this title.

**§116.611. Registration Requirements.**

(a) Registration for a standard permit shall be sent by certified mail, return receipt requested, or hand delivered to the Texas Natural Resource Conservation Commission (TNRCC) Office of Air Quality, the appropriate TNRCC Regional Office, and any local air pollution program with jurisdiction, before a standard permit can be claimed. The registration must be submitted on a Form PI-1S and must document compliance with the requirements of this section, including, but not limited to [shall]:

- \_\_\_\_\_ (1) the basis of emission estimates;
- \_\_\_\_\_ (2) quantification of all emission increases and decreases associated with the project being registered;
- \_\_\_\_\_ (3) sufficient information as may be necessary to demonstrate that the project will comply with §116.610(b) of this title (relating to Applicability);
- \_\_\_\_\_ (4) information that describes efforts to be taken to minimize any collateral emissions increases that will result from the project;
- \_\_\_\_\_ (5) a description of the project and related process; and



(6) a description of any equipment being installed.

[(1) the basis of emission estimates, quantification of all emission increases and decreases associated with the project being registered, sufficient information as may be necessary to demonstrate that the project will comply with §116.610(b) of this title (relating to Applicability and general conditions), information that describes efforts to be taken to minimize any collateral emissions increases that will result from the project a description of the project and related process, a description of any equipment being installed ; and]

(b)[(2)] Construction [be received by the TNRCC no later than 45 days prior to the commencement of the project. Work] may begin [on the project] any time after [upon] receipt of written notification from the executive director [TNRCC] that there are no objections [to the project] or 45 days after receipt by the executive director [TNRCC] of the registration [for the project], whichever occurs first, except where a different time period is specified for a particular standard permit.

(c) Any person claiming a standard permit may certify and register a federally enforceable emission limitation for one or more air contaminants by stating a maximum allowable emission rate in the registration. The certification may be amended and must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility. The certified registration must be maintained on-site and be provided upon request to a representative of the

executive director or any air pollution control agency having jurisdiction.

**§116.615. General Conditions.**

The following general conditions are [shall be] applicable to holders of standard permits, but will [may] not necessarily be specifically stated within the standard permit document.

(1) Protection of public health and welfare. The emissions from the facility must [shall] comply with all applicable rules and regulations of the Texas Natural Resource Conservation Commission ([TNRCC or] commission) adopted under the Texas Health and Safety Code, Chapter 382, and with intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public.

(2) Standard permit representations. All representations with regard to construction plans, operating procedures, and maximum emission rates in any registration for a standard permit become conditions upon which the facility or changes thereto, must [shall] be constructed and operated. It is [shall be] unlawful for any person to vary from such representations if the change will affect that person's right to claim a standard permit under this section. Any change in condition such that a person is no longer eligible to claim a standard permit under this section requires proper authorization under §116.110 of this title (relating to Applicability). If the facility remains eligible to claim a standard permit, the owner or operator of the facility must notify the executive director

[TNRCC] of any change in conditions which will result in a change in the method of control of emissions, a change in the character of the emissions, or an increase in the discharge of the various emissions as compared to the representations in the original registration or any previous notification of a change in representations. Notice of changes in representations must be received by the executive director [TNRCC] no later than 30 days after the change.

(3) (No change.)

[(4) Voiding of standard permit. A standard permit under this chapter is automatically void if the holder fails to begin construction within 18 months of date of registration, discontinues construction for more than 18 consecutive months prior to completion, or fails to complete construction within a reasonable time. Upon request, the executive director may grant a onetime 18-month extension of the date to begin construction.]

4[(5)] Construction progress. Start of construction, construction interruptions exceeding 45 days, and completion of construction shall be reported to the appropriate regional office [of the TNRCC] not later than 15 working days after occurrence of the event, except where a different time period is specified for a particular standard permit.

5[(6)] Start-up notification. The appropriate air program regional office of the commission and any other air pollution control program having jurisdiction shall be notified prior to the

commencement of operations of the facilities authorized by the standard permit in such a manner that a representative of the executive director [TNRCC] may be present. Phased construction, which may involve a series of units commencing operations at different times, shall provide separate notification for the commencement of operations for each unit. A particular standard permit may modify start-up notification requirements.

6[(7)] Sampling requirements. If sampling of stacks or process vents is required, the standard permit holder shall contact the [TNRCC] Office of Air Quality and any other air pollution control program having jurisdiction prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The standard permit holder is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

7[(8)] Equivalency of methods. It shall be the responsibility of the standard permit holder to demonstrate or otherwise justify the equivalency of emission control methods, sampling or other emission testing methods, and monitoring methods proposed as alternatives to methods indicated in the conditions of the standard permit. Alternative methods must [shall] be applied for in writing and must be reviewed and approved by the executive director prior to their use in fulfilling any requirements of the standard permit.

8[(9)] Recordkeeping. A copy of the standard permit along with information and data sufficient to demonstrate applicability of and compliance with the standard permit shall be maintained in a file at the plant site and made available at the request of representatives of the executive director [personnel from the TNRCC], United States Environmental Protection Agency, or any air pollution control program having jurisdiction. For facilities that normally operate unattended, this information shall be maintained at the nearest staffed location within Texas specified by the standard permit holder in the standard permit registration [application]. This information must [shall] include, but is not limited to, production records and operating hours. Additional recordkeeping requirements may be specified in the conditions of [requirements for] the standard permit. Information in the file must [shall] be retained for at least two years following the date that the information or data is obtained.

9[(10)] Maintenance of emission control. The facilities covered by the standard permit may [shall] not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for upsets and maintenance shall be made in accordance with §101.6 and §101.7 of this title (relating to Notification Requirements for Major Upset and Notification Requirements for Maintenance).

10[(11)] Compliance with rules. Registration of a standard permit by a standard permit applicant constitutes an acknowledgment and agreement that the holder will comply with all rules, regulations, and orders of the commission issued in conformity with the TCAA and the

conditions precedent to the claiming [granting] of the standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition governs [shall govern and be the standard by which compliance shall be demonstrated]. Acceptance includes consent to the entrance of commission employees and designated representatives [agents] into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

**§116.617. Standard Permits for Pollution Control Projects. (New.)**

This standard permit applies to the installation of emissions control equipment or implementation of control techniques as required by any governmental standard, or undertaken voluntarily, or to replace existing emission control equipment or control techniques. This standard permit also authorizes the substitution of compounds used in manufacturing processes for the purpose of complying with governmental standards or to reduce emission effects.

(1) The emissions limitations of Standard Exemptions 106 (c) or (d) and 118(c) referenced in §116.610(a)(1) of this title (relating to Applicability) do not apply to this standard permit. This standard permit cannot be used if the registrant receives notification that in the opinion of the executive director there are significant health effects concerns resulting from an increase in emissions of any air contaminant other than those for which a National Ambient Air Quality Standard has been established, until those concerns are addressed by the registrant to the satisfaction of the executive

director.

(2) The time period of 45 days in §116.611(b) of this title (relating to Registration Requirements) is modified to 30 days.

(3) Sections §116.615(4) and (5) of this title (relating to General Conditions) are not applicable to this standard permit.

(4) Replacement projects are subject to the following:

(A) The replacement emissions control equipment or control technique must be at least as effective an air pollution control method as the emissions control equipment or control technique being replaced. Equipment installed under this section must be subject to all applicable testing and recordkeeping requirements.

(B) The replacement of emissions control equipment or control technique under this section is not limited to the method of control currently in place. Any type of control equipment or control technique may be replaced with any other type of control equipment or control technique as long as all other requirements of this standard permit are met.

(C) If the replacement project does not result in an increase in emissions of

any air contaminant, registration notice must be submitted not later than 30 days after the operation of the replacement project begins. If the replacement project will result in an increase of any air contaminant, the registration time period requirements of paragraph (2) of this section are applicable.

(5) Installation of the control equipment or implementation of the control technique must not result in an increase in the facility's production capacity unless the capacity increase occurs solely as a result of the installation of control equipment or the implementation of control techniques on existing units.

(A) The owner or operator must obtain or qualify for any necessary authorization pursuant to §116.110 of this title (relating to Applicability) or §116.116 of this title (relating to Changes to Facilities) prior to utilizing any production capacity increase from a pollution control project required by any governmental standard that:

(i) results in the exceedance of any emission limit in an existing permit, other authorization, or grandfathered baseline; or

(ii) results in an emissions increase which exceeds the emission reduction due to the installation of control equipment or implementation of control techniques.

(B) Any production capacity increase resulting from the voluntary installation



of controls or the implementation of control techniques may not be utilized until the owner or operator obtains or qualifies for any necessary authorization pursuant to §116.110 or §116.116 of this title.

(6) Any emission increase of an air contaminant must occur solely as a result of the installation of control equipment or implementation of a control technique authorized by this section.

(7) Installation of emission control equipment or implementation of a control technique may not include the installation of a new production facility, reconstruction of a production facility as defined in 40 Code of Federal Regulations (CFR) §60.15(b)(1) and (c), or complete replacement of an existing production facility.

(8) If the project, without consideration of any other increases or decreases not related to the project, will result in a significant net increase in emissions of any criteria pollutant, a person claiming this standard permit shall submit, with the registration, information sufficient to demonstrate that the increase will meet the conditions of subparagraph (A) of this paragraph.

(A) The net emissions increase may not:

(i) considering the emission reductions that will result from the project, cause or contribute to a violation of any national ambient air quality standard;

(ii) cause or contribute to a violation of any Prevention of Significant Deterioration (PSD) increment; or

(iii) cause or contribute to a violation of any PSD visibility limitation.

(B) For purposes of this section, "significant net increase" means those emissions increases resulting solely from the installation of control equipment or implementation of control techniques that are equal to or greater than clauses (i) or (ii) of this subparagraph:

(i) the major modification threshold listed in §116.12 of this title (relating to Nonattainment Review Definitions), Table I, for pollutants for which the area is designated as nonattainment, or for precursors to these pollutants;

(ii) significant as defined in Title 40 CFR §52.21(b)(23) (effective July 20, 1993) for pollutants for which the area is designated attainment or unclassifiable, or for precursors to these pollutants.

(C) Netting is not required when determining whether this demonstration must be made for the proposed project. The increases and decreases in emissions resulting from the project must be included in any future netting calculation if they are determined to be otherwise creditable under PSD and nonattainment new source review provisions of the Federal Clean Air Act (FCAA),

Parts C and D and regulations promulgated thereunder.

(9) For purposes of compliance with the PSD and nonattainment new source review provisions of the FCAA, Parts C and D and regulations promulgated thereunder, any increase that is less than significant, or satisfies the requirements of paragraph (8) of this section may not constitute a physical change or a change in the method of operation. For purposes of compliance with the Standards of Performance for New Stationary Sources regulations promulgated by the United States Environmental Protection Agency at 40 CFR §60.14 (effective December 16, 1975), an increase that satisfies the requirements of paragraph (8) of this section also satisfies the requirements of 40 CFR §60.14(e)(5).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 20, 1996.

## **SUBCHAPTER F : STANDARD PERMITS**

The repeal is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeal implements the Health and Safety Code, §382.017.

### **§116.617. Standard Permits List. (Repeal.)**

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 20, 1996.

The commission proposes the repeal of §117.550, concerning Standard Construction Permits for Nitrogen Oxides Reasonably Available Control Technology (NO<sub>x</sub> RACT) Projects.

### **Explanation of Proposed Rule**

The commission proposes this revision to Chapter 117, concerning Control of Air Pollution from Nitrogen Compounds, and to the State Implementation Plan in order to streamline rule requirements. The Chapter 117 standard permit was adopted as an expedience in 1993 because at the time there was no standard permit for pollution control projects in Chapter 116. The two standard permits are largely duplicative. The more logical location for a standard permit is in Chapter 116, which concerns Control of Air Pollution by Permits for New Construction or Modification. Concurrent with this repeal, the commission proposes revisions to the Chapter 116 standard permit which are designed to allow greater flexibility in making the demonstration that a project is environmentally beneficial.

### **Fiscal Note**

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the proposed repeal.

### **Public Benefit/Cost Note**

Mr. Minick has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of implementing the repeal will be a more

understandable regulation. There are no anticipated costs to small businesses or persons except as follows. During this period, indirect costs to businesses may result from the proposed repeal. If the Chapter 117 standard permit is repealed, owners and operators of large sources required by Chapter 117 to install new pollution control facilities to reduce emissions of NO<sub>x</sub> would probably use the Chapter 116 standard permit for pollution control projects. Chapter 116 standard permits require a \$450 registration fee, whereas the Chapter 117 standard permit does not. There is also uncertainty as to whether the NO<sub>x</sub> RACT requirements will continue to be required. At a minimum, if the entire NO<sub>x</sub> RACT rule was repealed, there would be no registration costs. At a maximum, there may be 40 standard permits needed for NO<sub>x</sub> projects, which would result in annual costs of \$3600 over five years. These costs are minimal in relation to the costs of the controls associated with the permits.

### **Takings Impact Assessment**

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated Section 2007.043. The following is a summary of that assessment. The specific purpose of the repeal is to eliminate largely duplicative requirements in multiple chapters. Promulgation and enforcement of this rule repeal will not affect private real property which is the subject of the rule because the repeal makes minor changes to the requirements for obtaining a standard permit for NO<sub>x</sub> RACT projects.

### **Public Hearing**

A public hearing on this proposal will be held in Austin on January 6, 1997 at 10:00 a.m. in Building

F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Policy and Regulatory Development at (512) 239-4900. Requests should be made as far in advance as possible.

#### **Submittal of Comments**

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 96105-115-AI. Comments must be received by 5:00 p.m., January 6, 1997. For further information, please contact Randy Hamilton, Air Policy and Regulations Division, (512) 239-1512.

#### **Statutory Authority**

The repeal is proposed under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed repeal implements the Health and Safety Code, §382.017.



**SUBCHAPTER D: ADMINISTRATIVE PROVISIONS**

**§117.550. Standard Construction Permits for NO<sub>x</sub> RACT Projects. (Repeal.)**

The agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on November 20, 1996.